

MONTANA LEGISLATIVE HISTORY

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Chapter 314 19 89

Bill H 521 S \_\_\_\_\_

Original bill & history / c

H. Committee on Business & Economic Develop. S. Committee on Business & Industry

Hearing Date(s) Feb 02 ✓ c

Hearing Date(s) Mar 09 ✓ c

Feb 13 ✓ c

\_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

Date Out Feb 14 ✓ c

Mar 09 ✓ c

Did this bill originate in an interim committee? \_\_\_\_ Yes \_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

- HOUSE FINAL STATUS

3/23 SIGNED BY GOVERNOR  
CHAPTER NUMBER 280 EFFECTIVE DATE: 7/01/90

HB 520 INTRODUCED BY DAILY, ET AL.  
LIMIT OUTFITTERS TO TWO RIVERS WHEN PROVIDING  
FISHING SERVICES

2/01 INTRODUCED  
2/02 REFERRED TO FISH & GAME  
2/14 HEARING  
2/14 TABLED IN COMMITTEE

HB 521 INTRODUCED BY GOOD, ET AL.  
CLARIFY DEFINITION AND REQUIREMENTS OF REAL ESTATE  
BROKER

2/01 INTRODUCED  
2/02 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT  
2/07 HEARING  
2/14 COMMITTEE REPORT--BILL PASSED AS AMENDED  
2/18 2ND READING PASSED 96 2  
2/21 3RD READING PASSED 96 0

TRANSMITTED TO SENATE  
2/28 REFERRED TO BUSINESS & INDUSTRY  
3/09 HEARING  
3/09 COMMITTEE REPORT--BILL CONCURRED  
3/10 2ND READING CONCURRED 47 0  
3/10 SEGREGATED FROM COM/WHOLE REPORT  
3/11 2ND READING CONCURRED 44 0  
3/14 3RD READING CONCURRED 46 3

RETURNED TO HOUSE  
3/18 SIGNED BY SPEAKER  
3/20 SIGNED BY PRESIDENT  
3/20 TRANSMITTED TO GOVERNOR  
3/24 SIGNED BY GOVERNOR  
CHAPTER NUMBER 314 EFFECTIVE DATE: 10/01/89

HB 522 INTRODUCED BY RAMIREZ, ET AL.  
AMEND CONSTITUTION TO CREATE INFRASTRUCTURE TRUST  
FUND

2/01 INTRODUCED  
2/02 REFERRED TO APPROPRIATIONS  
3/06 FISCAL NOTE REQUESTED  
3/10 FISCAL NOTE RECEIVED  
3/14 HEARING  
3/14 FISCAL NOTE PRINTED  
3/21 TABLED IN COMMITTEE

HB 523 INTRODUCED BY NISBET, ET AL.  
REQUIRE MANDATORY HEADGEAR FOR MOTORCYCLE RIDERS

2/01 INTRODUCED  
2/02 REFERRED TO HIGHWAYS & TRANSPORTATION  
2/09 HEARING  
2/14 TABLED IN COMMITTEE

HB 524 INTRODUCED BY HANSEN, S., ET AL.

1 HOUSE BILL NO. 521  
 2 INTRODUCED BY Art H. S. Cody  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE  
 5 DEFINITION OF REAL ESTATE BROKER; AND AMENDING SECTIONS  
 6 37-51-102 AND 37-51-103, MCA."  
 7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 37-51-102, MCA, is amended to read:

10 "37-51-102. Definitions. Unless the context requires  
 11 otherwise, in this chapter the following definitions apply:

12 (1) "Account" means the real estate recovery account  
 13 established in 37-51-501.

14 (2) "Board" means the board of realty regulation  
 15 provided for in 2-15-1867.

16 (3) "Broker" includes an individual who:

17 (a) for another or for ~~a fee, commission, or other~~  
 18 valuable consideration or who with the intent or expectation  
 19 of receiving ~~the same consideration~~ negotiates or attempts  
 20 to negotiate the advertising, listing, sale, purchase,  
 21 rental, exchange, or lease of real estate or of the  
 22 improvements ~~thereon~~ on real estate or collects rents or  
 23 attempts to collect rents;

24 (b) obtains and organizes information from a potential  
 25 seller of real estate or refers the name of a potential

1 buyer of real estate; or

2 (c) advertises or holds himself out as engaged in any  
 3 of the foregoing activities; The term "broker" also includes  
 4 an individual referred to in subsection (3)(a) or (3)(b);

5 (d) is employed by or on behalf of the owner or lessor  
 6 of real estate to conduct the advertising, sale, leasing,  
 7 subleasing, or other disposition thereof at a salary or of  
 8 real estate for a fee, commission, or any other  
 9 consideration; The term "broker" also includes an  
 10 individual

11 (e) who engages in the business of charging an  
 12 advance fee or contracting for collection of a fee in  
 13 connection with a contract by which he undertakes primarily  
 14 to promote the advertising, sale, lease, or other  
 15 disposition of real estate in this state through its listing  
 16 in a publication issued primarily for this purpose or for  
 17 referral of information concerning real estate to brokers;  
 18 or

19 (f) makes the advertising, sale, lease, or other real  
 20 estate information available by public display to potential  
 21 buyers or both; and any person who aids, attempts, or offers  
 22 to aid, for a fee, any person in locating or obtaining any  
 23 real estate for purchase or lease.

24 (4) "Broker associate" means a broker who associates  
 25 with a broker owner and does not own an interest in a real

1 estate firm.

2 (5) "Broker owner" means a broker who owns or has a  
3 financial interest in a real estate firm.

4 (6) "Department" means the department of commerce  
5 provided for in Title 2, chapter 15, part 18.

6 (7) "Franchise agreement" means a contract or  
7 agreement by which:

8 (a) a franchisee is granted the right to engage in  
9 business under a marketing plan prescribed in substantial  
10 part by the franchisor;

11 (b) the operation of the franchisee's business is  
12 substantially associated with the franchisor's trademark,  
13 trade name, logotype, or other commercial symbol or  
14 advertising designating the franchisor; and

15 (c) the franchisee is required to pay, directly or  
16 indirectly, a fee for the right to operate under the  
17 agreement.

18 (8) "Person" includes individuals, partnerships,  
19 associations, and corporations, foreign and domestic, except  
20 that when referring to a person licensed under this chapter,  
21 it means an individual.

22 (9) "Real estate" includes leaseholds as well as any  
23 other interest or estate in land, whether corporeal,  
24 incorporeal, freehold, or nonfreehold and whether the real  
25 estate is situated in this state or elsewhere.

1 (10) "Salesman" includes an individual who for a  
2 salary, commission, or compensation of any kind is  
3 associated, either directly, indirectly, regularly, or  
4 occasionally, with a real estate broker to sell, purchase,  
5 or negotiate for the sale, purchase, exchange, or renting of  
6 real estate."

7 **Section 2.** Section 37-51-103, MCA, is amended to read:

8 "37-51-103. **Exemptions.** A single An act performed for  
9 ~~a--commission--or~~ compensation of any kind in the buying,  
10 selling, exchanging, leasing, or renting of real estate or  
11 in negotiating therefor for others, except as hereinafter  
12 specified in this section, shall constitute the person  
13 performing any of ~~such the~~ acts a real estate broker or real  
14 estate salesman. The provisions of this chapter; ~~however,~~  
15 ~~shall may~~ not:

16 (1) apply to any person who, as owner or lessor, shall  
17 perform any ~~of the aforesaid~~ acts listed in subsection (1)  
18 with reference to property owned or leased by himself or to  
19 an auctioneer employed by the owner or lessor to aid and  
20 assist in conducting a public sale held by ~~such the~~ owner or  
21 lessor;

22 (2) apply to any person acting as attorney-in-fact  
23 under the duly executed power of attorney from the owner of  
24 any real estate authorizing the final consummation of any  
25 contract for the purchase, sale, exchange, renting, or

1 leasing of any real estate;

2 (3) be construed to include in any way the services  
3 rendered by any attorney at law in the performance of his  
4 duty as such an attorney at law;

5 (4) apply to any person duly appointed by a court for  
6 purpose of evaluation or appraising an estate in a probate  
7 matter;

8 (5) be held to include, while acting as such, a  
9 receiver, a trustee in bankruptcy, an administrator or  
10 executor, any person selling real estate under order of any  
11 court, a trustee under a trust agreement, deed of trust, or  
12 will, or an auctioneer employed by a receiver, trustee in  
13 bankruptcy, administrator, executor, or trustee to aid and  
14 assist in conducting a public sale held by ~~any-such~~ the  
15 officer;

16 (6) apply to public officials in the conduct of their  
17 official duties;

18 (7) apply to any person, partnership, association, or  
19 corporation, foreign or domestic, performing any act with  
20 respect to prospecting, leasing, drilling, or operating land  
21 for hydrocarbons and hard minerals or disposing of any  
22 hydrocarbons, hard minerals, or mining rights therein,  
23 whether upon a royalty basis or otherwise; or

24 (8) apply to persons acting as managers of housing  
25 complexes for low-income persons, which are subsidized,

1 directly or indirectly, by this state or an agency or  
2 subdivision thereof or by the government of the United  
3 States or an agency thereof."

4 NEW SECTION. **Section 3. Extension of authority.** Any  
5 existing authority to make rules on the subject of the  
6 provisions of [this act] is extended to the provisions of  
7 [this act].

-End-

See exhibit 3 for Mr. England's testimony.

Mr. Reed supports this bill. He said that the national association of realtors said that in 90 percent of cases where people buy homes, this is the largest financial investment that they make in their lives and need someone qualified to advise them in financing this purchase.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Hansen asked Mr. Mather if all real estate would have to be advertised and displayed by a realtor? Mr. Mather asked if Rep. Hansen was referring to individual people? Private individuals can advertise their own homes.

Rep. Stepler asked Mr. Hopgood if on pages 1 and 2, (a) through (g), if this was not the definitions for a broker? Mr. Hopgood said they were.

Rep. Pavlovich asked Mr. Jacobson if he could get the amendment back to the committee within an hour or hour and half we could do this bill today. The amendments don't look that big. Rep. Pavlovich asked Rep. Good about the continuing education in real estate that people that have been in real estate for more than 20 years would like to be grandfathered in and not have to go on with the continuing education, how do you feel about this? Rep. Good said that her own feeling is that financing is changing constantly and these people should continue learning about real estate and its financing regardless of how long they have been in the business.

Closing by Sponsor: Rep. Good pointed that for the past 26 years realtors have been regulated and have spent a lot of money getting licenses and being regulated and continuing their education. In being fair to these people who have complied with our regulations I ask you to do pass HB 521.

HEARING ON HOUSE BILLS 429, 430, 431

Presentation and Opening Statement by Sponsor:

Rep. Ed Grady, House District 47. Rep. Grady stated that HB 429, 430, and 431 all relate to the same subject, but they had to be done in three separate bills to complete the subject. I will let Ron Waterman explain and go through the bills in detail. Mr. Waterman helped to draft the bills.

economic times, mortgage methods, interest rates, and funding vehicles shift in a matter of days. It is crucial that our people be competently and correctly advised for the huge investment that a home represents and one that is undertaken only a handful of times by an individual. Mistakes can be financially costly and emotionally devastating. The wise homebuyer or seller turns to the best advisor available. This expertise is not easily acquired. It is often times gained after a vigorous study. The people to whom I refer are real estate agents or brokers, educated, tested, and regulated. Recently firms have advertised that for a flat fee they will sell your home for you. They possess no particular measurable skills or education. They advertise advice on financing, title insurance, and legal documents. Our people deserve to know the difference in order to make informed choices in their pursuit of the American dream. I urge you to give HB 521 a do pass.

Testifying Proponents and Who They Represent:

Martin Jacobson, Department of Commerce, Board of Realty  
Regulation  
John England, Great Falls  
Len Reed, Great Falls  
Steve Mandeville, Helena  
Tom Mather, Great Falls

Proponent Testimony:

Mr. Jacobson stated the board is not the drafter of the bill, but the board does support the bill in so far as it requires a license for persons who make referrals, real estate finder fees, and advertising locations. The bill is needed for the protection of the public. This is an area that is presently opened to unlicensed persons. These people may enter the real estate sales arena and once in it is expected that their activities go beyond what their stated purpose is, merely as an advertising or referring agency. They do engage in activities for which regulation is necessary. Regulation of these fringe areas is favored by the board. It would make the board's enforcement of the laws and rules pertaining to real estate easier. The board requests that one amendment be made to this bill on page 2, line 19 and 21, and page 4, line 17 is an error and should remain as written.

Mr. Hopgood stated that the Montana Association of Realtors supports this bill and would support the amendments proposed.

Mr. Mandeville of Ahmann Heller Realty stated that he supports this bill.

See exhibits 1 and 2 for Mr. Mather's testimony.

Congress take regulation away from the states and give it to the federal government, this bill says let's allow more money into the system to regulate those people. I am all for it, let's send it out of here without going it to appropriations. Rep. Simon said the insurance commissioner should have the additional money to hire an actuary and so on. But I can't believe that they need 2.5 million dollars over there right now. A 2.5 million dollar hit to the general fund is out of the question right now. Rep. Blotkamp asked if we sent a bill out of committee last week that would cost the insurance commissioner 1.5 million dollars? Where does that come from if we don't pass this bill? Rep. Simon said that Rep. Whalen's bill authorizing the insurance commissioner's office to assess additional charges to certain insurance companies for the actuary etc., that will not come out of this money. It is additional charges that they will add on top of this money. I think in this case we are talking about different money.

Rep. Wallin made a substitute motion of DO NOT PASS. The DO NOT PASS motion failed on a roll call vote of 5-11. Rep. Pavlovich suggested we reverse the vote. Rep. Thomas moved to do this.

Recommendation and Vote: HB 306 DO PASS 11-5.

#### DISPOSITION OF HOUSE BILL 446

Motion: Rep. Simon moved to table the bill.

Amendments, Discussion, and Votes: Rep. Pavlovich stated that in Rep. Gould's bill HB 207 yesterday there is a paragraph that has incentives for the keno retailers that if they sell so many tickets they will be given a little raise. I think we will let Rep. Daily's bill sit here and see what happens with HB 207. Rep. Simon thought it might be appropriate to have some sort of action on this bill so we don't have to come back later on if Rep. Gould's bill takes care of this situation and he moved to table this bill. Rep. Simon said we can remove it from the table later.

Recommendation and Vote: HB 446 TABLED 10-6 vote.

#### HEARING ON HOUSE BILL 521

Presentation and Opening Statement by Sponsor:

Rep. Good stated that her bill would clarify the definition of real estate broker; and amend Sections 37-51-102 and 37-51-103, MCA. Rep. Good said the American dream is to own your own home. Obtaining that home can become a nightmare, however. The purchase of a home is the single, largest lifetime purchase for most people. In the fast changing



# DEPARTMENT OF COMMERCE



TED SCHWINDEN, GOVERNOR

CAPITOL STATION  
1424 9TH AVENUE

## STATE OF MONTANA

(406) 449-3494

HELENA, MONTANA 59620-0401

Martin Jacobson  
Staff Attorney  
Department of Commerce  
State of Montana  
1424 9th Avenue  
Helena, Montana 59620  
(406) 444-4290

December 20, 1988

Tom Nather  
P.O. Box 1724  
Great Falls, Montana 59403

Dear Mr. Nather,

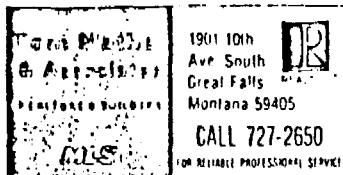
Concerning operations such as "By Owner," it is possible that the public does need protection. If protection of the public is necessary, the legislature probably would entertain a bill, address the matter, and regulate such operations adequately.

In the present analysis of "By Owner" and similar operations before the board and the Attorney General, protection of the public is not the direct issue. What is the direct issue is whether the presently existing law includes the basic concept of operations such as "By Owner" within the definition of "broker."

All indications are that the basic concept of "By Owner" does not fall within the definition of "broker." It appears that this is what the Attorney General will determine. If this is a problem, legislation could be the answer.

Sincerely,

A handwritten signature in cursive script that reads "Martin Jacobson".  
Martin Jacobson  
Staff Attorney



**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1724  
GREAT FALLS MONTANA 59403

December 16, 1988

Martin Jacobson, Staff Attorney  
Department of Commerce  
State of Montana  
1424 9th Avenue  
Helena, Montana 59403

RE: Your letter of December 14th

Dear Mr. Jacobson:

If our real estate licensing law is valid and the Board of Realty Regulation is truly interested in protecting the public the practice of unlicensed realty activity of reference will be stopped, I believe.

The "By Owner" program may be naively "written off" as a marketing program with sellers and buyers free to bungle or complete a real estate transaction via a claimed "Hands Off" policy by marketing agents.

Aren't such programs as "By Owner" actually inviting, condoning, encouraging and activating the practice of real estate by unlicensed manipulators?

Does our licensing law protect the public as was intended?  
Are licensing, continuing education requirements, etc. valid?

Sincerely,

Tom Mather Broker/Owner  
Tom Mather & Associates

TM:de

# DEPARTMENT OF COMMERCE



TED SCHWINDEN, GOVERNOR

CAPITOL STATION  
1424 9TH AVENUE

## STATE OF MONTANA

(406) 449-3494

HELENA, MONTANA 59620-0401

Martin Jacobson  
Staff Attorney  
Department of Commerce  
State of Montana  
1424 9th Avenue  
Helena, Montana 59620  
(406) 444-4290

December 14, 1988

Tom Mather  
Tom Mather and Associates  
P.O. Box 1724  
Great Falls, Montana 59403

Dear Mr. Mather,

You have expressed some concern about businesses similar to "By Owner." I am certainly willing to discuss the matter with you if you would like.

Sincerely,

A handwritten signature in cursive script that reads "Martin Jacobson".

Martin Jacobson  
Staff Attorney

CALL 727-2650

TOM MATHER & ASSOCIATES REALTY CO.  
COMMERCIAL AND RESIDENTIAL

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

GREAT FALLS, MONTANA 59401

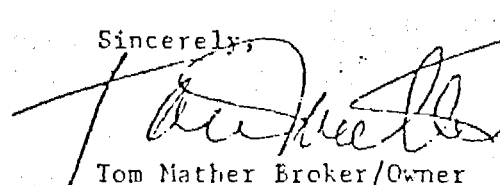
December 1, 1988

To Whom It May (or May Not) Concern  
Board of Realty Regulation

Why we should be paying for real estate licenses concerns  
me when unlicensed agents are selling real estate under  
the guise of of marketing "By Owner" in direct competition.

Please enlighten me.

Sincerely,



Tom Mather Broker/Owner  
Tom Mather & Associates

TM:de



# GREAT FALLS BOARD OF REALTORS

1016 9th STREET SOUTH  
P. O. BOX 1591

GREAT FALLS, MONTANA 59403

29 November 1988

## BROKER/OWNERS

Your attention is invited to the letter from Don Ostrem and the advertisement from "For Sale by Owner" that are attached.

The Board of Directors would like all Broker/Owners to consider sending these attachments, along with a personal letter of protest, to the Board of Realty Regulation when you send in your license renewal fee. Your letter of protest should be weighted towards the concept of "If I don't have to be licensed, why should I have to pay a renewal fee".

JOY SCHENCK  
President

DAILY ROLL CALL  
BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2 7 89

| NAME                   | PRESENT | ABSENT | EXCUSED |
|------------------------|---------|--------|---------|
| PAVLOVICH, BOB         | ✓       |        |         |
| DeMARS, GENE           | ✓       |        |         |
| BACHINI, BOB           | ✓       |        |         |
| BLOTKAMP, ROB          | ✓       |        |         |
| HANSEN, STELLA JEAN    | ✓       |        |         |
| JOHNSON, JOHN          | ✓       |        |         |
| KILPATRICK, TOM        | ✓       |        |         |
| MCCORMICK, LLOYD "MAC" | ✓       |        |         |
| STEPPLER, DON          | ✓       |        |         |
|                        |         |        |         |
| GLASER, BILL           | ✓       |        |         |
| KELLER, VERNON         | ✓       |        |         |
| NELSON, THOMAS         | ✓       |        |         |
| SIMON, BRUCE           | ✓       |        |         |
| SMITH, CLYDE           | ✓       |        |         |
| THOMAS, FRED           | ✓       |        |         |
| WALLIN, NORM           | ✓       |        |         |
| PAUL VERDON            | ✓       |        |         |
|                        |         |        |         |
|                        |         |        |         |
|                        |         |        |         |
|                        |         |        |         |
|                        |         |        |         |

## DISPOSITION OF HOUSE BILL 287

Motion: Rep. McCormick moved DO NOT PASS.

Amendments, Discussion, and Votes: Rep. Simon moved the statement of intent into the bill. The statement of intent DO PASS. Rep. McCormick moved DO NOT PASS as amended.

Recommendation and Vote: HB 287 DO NOT PASS as amended 15-1 vote.

## DISPOSITION OF HOUSE BILL 521

Motion: Rep. Thomas moved DO PASS and moved the amendments.

Amendments, Discussion, and Votes: With the permission of the committee Tom Hopgood explained the amendments. He explained that this was a bill that came from the Great Falls Realty. Rep. Simon questioned whether this would constitute newspapers and other periodicals as brokers of real estate since it says you can't advertise unless you are a broker. After discussions after the meeting and after speaking with Rep. Simon and Chuck Walk of the Montana Newspaper Association and Rep. Good we come up with these amendments which we think will solve the problem of having a newspaper being licensed in order to run real estate advertising. We also cleaned up other language that the board of realtors wanted cleaned up.

Rep. Simon stated that he approved of most of the amendments being offered, but I think we still have a problem on page one of the amendments in subsection 3(b). Rep. Simon would like to segregate this subsection (b) and deal with it separately and would like to amend this part out. Rep. Pavlovich said we will take subsection 3(b) on page one out and just consider the rest of the amendments.

The rest of the amendments DO PASS. Now, Rep. Pavlovich said we will consider subsection 3(b). Rep. Simon asked if we voted no if subsection 3(b) if it would be out of the bill completely. Rep. Thomas said this was all new language and wants to know if we revert to the old bill. Rep. Thomas withdrew his motion to amend subsection 3(b). New language 3(b) is out of the bill. Rep. Simon moved to strike 3(b) of the bill and renumber subsequent sections.

Rep. Pavlovich asked for any further discussion, question called for. The amendments DO PASS.

Rep. Bachini asked what happens now to the people that are in business By Owner? Rep. Simon said as I understand this bill now, if you are strictly in the advertising business where you take information about somebody's house and put it

in a booklet and make it available to other buyers, you are exempt from this bill. But, if you say we will help you with the financing, counselling about how to sell you home, all that sort of thing, you have stepped over the line by this bill and you have to have a broker's license. This bill allows advertising you to be in the business of saying contact Rep. Bachini, he has a house you would be interested in, that contact comes from the magazine only. Rep. Bachini also wanted to know how many people were in this business and would be affected by the bill when it goes into effect on October 1, 1989. Mr. Hopgood said they are in the larger cities of Montana. What they are doing is performing the services that are rendered by licensed real estate brokers who are regulated by the state.

Recommendation and Vote: HB 521 DO PASS as amended  
unanimously.

#### HEARING ON HOUSE BILL 535

#### Presentation and Opening Statement by Sponsor:

Rep. Brown stated that this bill will revise medicare supplement insurance minimum standards to comply with the federal medicare catastrophic coverage act of 1988; provides a penalty for violation of medicare supplement insurance minimum standards' appropriates money to the state auditor to monitor compliance; amends sections 33-16-103 and 33-22-903 through 33-22-908, MCA; and provides an immediate effective date for the extension of rulemaking authority.

#### Testifying Proponents and Who They Represent:

Tanya Ask, State Auditor's Office  
Judith Carlson, Montana Senior Citizens Assoc.

#### Proponent Testimony:

See exhibit 1 for Ms. Ask's written testimony.

Ms. Carlson stated that her association very much supports HB 535. Three things in this bill they find particularly helpful are: the requirement of non duplication of medicare benefits; 30 days to renew policy; and the printing of the medicare supplemental guide.

#### Testifying Opponents and Who They Represent:

None

#### Opponent Testimony:

None



# ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT

COMMITTEE

DATE 2/13/89 BILL NO. 521 NUMBER 1

| NAME            | AYE | NAY |
|-----------------|-----|-----|
| Bob Pavlovich   |     |     |
| Bob Bachini     |     |     |
| Rob Blotkamp    |     |     |
| Gene DeMars     |     |     |
| Bill Glaser     |     |     |
| Stella Hansen   |     |     |
| John Johnson    |     |     |
| Vernon Keller   |     |     |
| Tom Kilpatrick  |     |     |
| Lloyd McCormick |     |     |
| Thomas Nelson   |     |     |
| Bruce Simon     |     |     |
| Clyde Smith     |     |     |
| Don Stepler     |     |     |
| Fred Thomas     |     |     |
| Norm Wallin     |     |     |

TALLY

16

Sue Pennington  
Secretary

Bob Pavlovich  
Chairman

MOTION: do pass as amended

STANDING COMMITTEE REPORT

February 14, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 521 (first reading copy -- white) do pass as amended.

Signed: Robert Pavlovich, Chairman

And, that such amendments read:

1. Page 1, line 19.

Following: "~~same~~"

Insert: "valuable"

2. Page 1, line 20.

Strike: "advertising,"

3. Page 1, line 24, through page 2, line 4.

Strike: subsections (b) and (c) in their entirety

Renumber: subsequent subsections

4. Page 2, line 6.

Strike: "advertising,"

5. Page 2, line 14.

Strike: "advertising,"

6. Page 2, line 18.

Strike: "or"

7. Page 2, line 23.

Following: "lease"

Insert: ";

(e) aids, attempts, or offers to aid for a fee any person in locating or obtaining any real estate for purchase or lease; or

(f) advertises or holds himself out as engaged in any of the activities referred to in subsections (3)(a) through (3)(f)"

8. Page 4, line 8.

Following: "~~single~~"

Insert: "(1)"

9. Page 4, line 16.

Strike: "(1)"

Insert: "(a)"

Renumber: subsequent subsections on page 4, line 22, and page 5, lines 2, 5, 8, 16, 18, and 24

10. Page 6, line 4.

Following: line 3

Insert: "(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business."

HOUSE BILL NO. 521

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Broker" includes an individual who:

(a) for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same VALUABLE consideration negotiates or attempts to negotiate the advertising, listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon on real estate or collects rents or attempts to collect rents;

(b) FOR ANOTHER OR FOR VALUABLE CONSIDERATION OR WITH THE INTENT OR EXPECTATION OF RECEIVING VALUABLE CONSIDERATION obtains and organizes information from a potential seller OR LESSOR of real estate or refers the name of a potential buyer of real estate; or AND MAKES SUCH INFORMATION AVAILABLE TO POTENTIAL BUYERS OR LESSEES OF REAL ESTATE;

(c) FOR ANOTHER OR FOR VALUABLE CONSIDERATION OR WITH THE EXPECTATION OF RECEIVING VALUABLE CONSIDERATION REFERS THE NAME OF A POTENTIAL BUYER, SELLER OR LESSOR OR LESSEE OF REAL ESTATE TO A PERSON LICENSED UNDER THIS CHAPTER.

(d) is employed by or on behalf of the owner or lessor of real estate to conduct the advertising, sale, leasing, subleasing, or other disposition thereof at a salary or of real estate for a fee, commission, or any other consideration; The term "broker" also includes an individual

(e) who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the advertising, sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers; or

(f) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers or both; and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(g) AIDS, ATTEMPTS, OR OFFERS TO AID FOR A FEE, ANY PERSON IN LOCATING OR OBTAINING ANY REAL ESTATE FOR PURCHASE OR LEASE; OR

~~(e)~~ (h) advertises or holds himself out as engaged in any of the foregoing activities. ~~The term "broker" also includes an individual referred to in subsections (3)(a) or THROUGH (3)(b)~~  
(h) 7.

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(5) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(8) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(9) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(10) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

Section 2. Section 37-51-103, MCA, is amended to read:

"37-51-103. Exemptions. A single (1) An act performed for a ~~commission or~~ compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as ~~hereinafter~~ specified in this section, shall constitute the person performing any of such the acts a real estate broker or real estate salesman. The provisions of this chapter, ~~however, shall~~ may SHALL not:

(a) ~~(1)~~ apply to any person who, as owner or lessor, shall perform any ~~of the aforesaid~~ acts listed in subsection (1) with reference to property owned or leased by himself or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such the owner or lessor;

(b) ~~(2)~~ apply to any person acting as attorney-in-fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting, or leasing of any real estate;

(c) ~~(3)~~ be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such an attorney at law;

(d) ~~(4)~~ apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

(e) ~~(5)~~ be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by any such the officer;

(f) ~~(6)~~ apply to public officials in the conduct of their official duties;

(g) ~~(7)~~ apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; or

(h) ~~(8)~~ apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof.

(2) THE PROVISIONS OF THIS CHAPTER SHALL NOT APPLY TO ANY NEWSPAPER OR OTHER PUBLICATION OF GENERAL CIRCULATION OR TO ANY RADIO OR TELEVISION STATION ENGAGED IN THE NORMAL COURSE OF BUSINESS."

NEW SECTION. Section 3. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Amendments to House Bill No. 521  
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon  
February 13, 1989

1. Page 1, line 19.

Following: "same"

Insert: "valuable"

2. Page 1, line 20.

Strike: "advertising,"

3. Page 1, line 24, through page 2, line 4.

Strike: subsections (b) and (c) in their entirety

Renumber: subsequent subsections

4. Page 2, line 6.

Strike: "advertising,"

5. Page 2, line 14.

Strike: "advertising,"

6. Page 2, line 18.

Strike: "or"

7. Page 2, line 23.

Following: "lease"

Insert: ";"

(e) aids, attempts, or offers to aid for a fee any person in locating or obtaining any real estate for purchase or lease; or

(f) advertises or holds himself out as engaged in any of the activities referred to in subsections (3)(a) through (3)(f)"

8. Page 4, line 8.

Following: "single"

Insert: "(1)"

9. Page 4, line 16.

Strike: "(1)"

Insert: "(a)"

Renumber: subsequent subsections on page 4, line 22, and page 5, lines 2, 5, 8, 16, 18, and 24

10. Page 6, line 4.

Following: line 3

Insert: "(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business."

he closed.

DISPOSITION OF HOUSE BILL 470

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Noble made a motion HB 470 BE CONCURRED IN. Senator Hager seconded the motion. The motion Carried Unanimously. Senator Noble carried the bill on the Senate floor.

HEARING ON HOUSE BILL 521

Presentation and Opening Statement by Sponsor:

Representative Good, House District 36, said she perceived HB 521 to be a consumer protection bill. She said the purpose of the bill was to insure that people who gave brokerage type information, were indeed licensed. She said that because there was ongoing education available, and she thought that if one person had to get that education an license, it was only fair that everyone did. The bill amended two sections of the law which regulated real estate brokers and salesmen. The definition of a "broker" was expanded to include a person who "makes the advertising, sale, lease, or other real estate information available by public display to potential buyers".

Presently the exemption section of the law provided that any person who performed certain acts for a "commission or compensation" was a broker or salesman. This bill deleted the word "commission". The bill also clarified that the real estate licensing laws did not apply to a newspaper, other publication, or to radio or television media. Representative Good passed out copies of Exhibit #4.

List of Testifying Proponents and What Group They Represent:

Tom Hopgood - Montana Realtor Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Tom Hopgood said HB 521 arose from a concern of various people, most of them were real estate agents, and also the Board of Realty Regulations. He said it



pertained to the situation where groups were connoting to be a 'by owner' type sales organization and were actually doing the things licensed real estate agents did. He said they generally had an office, took information, gave advice regarding the market and methods of sale, and might disseminate information and do some paper work, gave advice about financing and legal agreements, and may end up closing a sale. He said that in essence, they were doing the same work as licensed real estate people did, and they were charging a fee for their services. He stated there was important difference, and that was that they were not regulated by the Board of Realty Regulations, and were not licensed as real estate agents. He said there were no requirements for these people's skills or qualifications. He said it was their position that if people were doing the work of a licensed real estate person, then they should be licensed and regulated. He said they believed HB 521 addressed the situation, and were in support of passage.

Questions From Committee Members: Chairman Thayer asked how wide spread the problem was? Representative Good said she understood there were several communities throughout Montana involved.

Senator Williams asked if she knew where the groups had originated? Representative Good said she wasn't aware of the origin, but she knew of people who had reported the group as far less than satisfactory.

Senator Meyer said he thought it was a rather small sized group to be dealt with, not a large organization.

Closing by Sponsor: Representative Good said she saw the bill as consumer protection, and one she thought every neighborhood deserved to have for their just protection.

#### DISPOSITION OF HOUSE BILL 521

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch made a motion HB 521 BE CONCURRED IN. Senator McLane seconded the motion. The motion Carried, with Senator Williams and Senator Hager voting no. Senator Meyer carried the bill on the Senate floor.

SENATE STANDING COMMITTEE REPORT

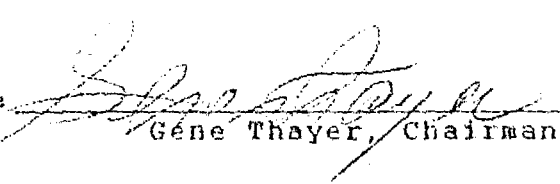
March 9, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 521 (third reading copy -- blue), respectfully report that HB 521 be concurred in.

Sponsor: Good (Meyer)

BE CONCURRED IN

Signed: 

Gene Thayer, Chairman

Law Offices of

# GRAYBILL, OSTREM, WARNER & CROTTY

No. 18 Sixth Street North • Suite 200 • Great Falls, Montana 59401 • Telephone (406) 452-8566

Leo C. Graybill (1973)

Leo Graybill, Jr.

Donald L. Ostrem

Gregory H. Warner, P.C.

G. Robert Crotty, Jr., P.C.

Michael G. Baret

Turner C. Graybill

Admitted in Massachusetts & California

Scott M. Radford

Admitted in California

Stephen A. Doherty

Admitted in Oregon

Truman G. Bradford

Of Counsel

Telecopier: (406) 727-3225

File Number:

3180.00

November 17, 1988

Patricia J. Schaeffer, Esq.

Assistant Attorney General

Office of the State of Montana Attorney General, Mike Greely

Justice Building

215 North Sanders

Helena, Montana 59620

Re: Opinion re Real Estate Broker Licensing

Your Letter of 2 November 1988

Dear Ms. Schaeffer:

Thank you very much for your letter and copy of the proposed draft in the above matter regarding real estate broker licensing.

My client in this matter is the Great Falls Board of Realtors, and I have asked for their comments with regard to the proposed opinion. While I suppose that the question that they are most concerned with is a narrower question than the one considered by you in creating your opinion, they do have concern with regard to the portion of the proposed opinion stating, "A person is not required to be licensed as a real estate broker or salesman in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate."

Their concern is that allowance of payment of finders' fees or kickbacks to buyers and sellers is the subject of Section 37-51-321(16), providing for revocation of an agent or broker's license for "paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this chapter." I think subsection (6), "accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;" also has some applicability.

Patricia J. Schaeffer, Esq.  
November 17, 1988  
Page 2

In any event, my clients do feel strongly that all of their education in the matter of real-estate sales indicates that an agent or broker is not allowed to pay anyone a fee of any kind for providing names of buyers or sellers unless that person has a real estate license. They also feel strongly that this should be inclusive within your opinion.

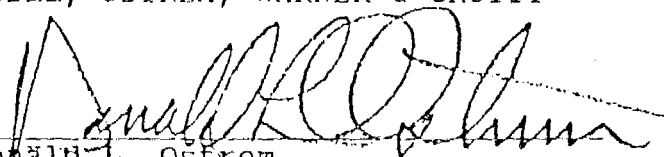
Otherwise, the concern seems to be that while the remainder of your opinion as generally stated is correct, it may not be inclusive of all of the activity that could occur in a given situation involving a person or entity obtaining and organizing information from potential sellers of real estate, and for a fee charged to the seller only, making that information available by public display to interested potential buyers.

Thank you for the opportunity to provide input into your process.

Very truly yours,

GRAYBILL, OSTREM, WARNER & CROTTY

By:

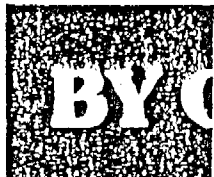
  
Donald L. Ostrem

DLO:la

cc: Jim Basta, Great Falls Board of Realtors  
Barbara Stordahl, Red Carpet Vesta Realty  
Tom Mather, Tom Mather & Associates

★MONTANA ★IDAHO ★WASHINGTON  
★ALBERTA

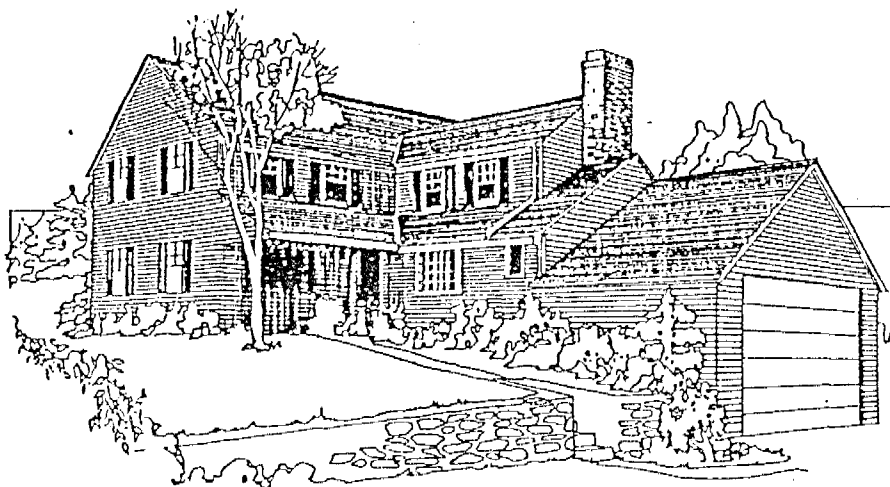
November  
1988



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**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1724  
GREAT FALLS, MONTANA 59403

November 17, 1988

REALTOR

Great Falls Board of REALTORS

Dear REALTORS:

Why "By Occupant"?

There was no one more concerned and apprehensive than I when the "By Owner" marketing program surfaced as enclosures will indicate.

With title companies and lenders providing purchase agreements and assisting "By Owner" clients in completing same and willingness to provide financing assistance and title insurance policies this program has expanded in our market as in other markets in the state.

Our appeal to the State Board of Realty Regulation to stop this unlicensed marketing program was referred to the Attorney General's office for legality opinion by the Board, three of the five realty board members being REALTORS.

Enclosures signify that the Board of Realty Regulation will take no action to require licensing of the "By Owner" marketing firm personnel if their activities are confined to marketing.

The "By Occupant" program was initiated to curtail and diminish the effect of the "By Owner" program in our market toward protection of the public as our licensing act of 1963 and creation of the Board of Real Estate Regulation was intended.

Tom Mather, REALTOR

TM:de

Enclosure

STATE  
OF  
MONTANA

ATTORNEY GENERAL  
MIKE GREELY

JUSTICE BUILDING, 215 N. SANDERS, HELENA, MONTANA 59620  
TELEPHONE (406) 444-2028

2 November 1988

Great Falls Board of Realtors  
P.O. Box 1591  
Great Falls MT 59403

Ladies and Gentlemen:

Enclosed is an unedited draft of an opinion regarding  
licensing as a real estate broker or salesman for  
advertising of real estate and for referral of  
information to brokers. Please review it and forward  
any comments or proposed modifications to me by  
November 16, 1988. After I have reviewed your response  
and made any changes, a final draft will be submitted to  
the Attorney General for his consideration.

If you have any questions, please do not hesitate to  
call me.

Sincerely,



PATRICIA J. SCHAEFFER  
Assistant Attorney General

Enclosure

# DRAFT

VOLUME NO. 42

OPINION NO. \_\_\_\_

BUSINESS REGULATION - Advertisement of real estate;  
finder's fees;

LICENSES, PROFESSIONAL AND OCCUPATIONAL - Advertisement  
of real estate; finder's fees;

REAL ESTATE AGENTS, BROKERS, DEALERS, AND SALESMEN -  
Advertisement of real estate; finder's fees;

MONTANA CODE ANNOTATED - sections 37-51-101 to  
37-51-512, MCA;

OPINIONS OF THE ATTORNEY GENERAL - 34 Op. Att'y Gen.  
No. 23 (1972);

MONTANA LAWS of 1957 - Chapter 129, section 1.

HELD: 1. A person is not required to be licensed as a  
real estate broker or salesman in order to  
obtain and organize information from potential  
sellers of real estate, and for a fee charged  
to the seller only, to make that information  
available by public display to interested  
potential buyers.

2. A person is not required to be licensed as a  
real estate broker or salesman in order to  
receive a fee, commission, or compensation for  
referring the name of a potential buyer of  
real estate.

# DRAFT



THEREFORE, IT IS MY OPINION:

1. A person is not required to be licensed as a real estate broker or salesman in order to obtain and organize information from potential sellers of real estate, and for a fee charged to the seller only, to make that information available by public display to interested potential buyers.
2. A person is not required to be licensed as a real estate broker or salesman in order to receive a fee, commission, or compensation for referring the name of a potential buyer of real estate.

Very truly yours,

MIKE GREELY  
Attorney General



**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1724  
GREAT FALLS, MONTANA 59403

August 17, 1988

Mike Greely, Attorney General  
215 N. Sanders  
Helena, Montana 59601

Dear Mike:

It appears to me that this "By Owner" organization is selling real estate without a license by subterfuge and law avoidance.

Hopefully in the best interest of the public, a judicious decision may be rendered in the public's best protected interest and welfare.

Your study and consideration relative to this public threat will be most appreciated.

Sincerely,

Tom Mather Broker/Owner  
Tom Mather & Associates

TM:de

# BOARD OF REALTY REGULATION

DEPARTMENT OF COMMERCE



TED SCHWINDEN, GOVERNOR

## STATE OF MONTANA

1424 9TH AVENUE  
HELENA, MONTANA 59620-0407

(406) 444-2961 Main desk  
(406) 444-4290 Admin. Office/Attorney  
(406) 444-4294 Licensing  
(406) 444-4291 444-4292 Investigators/Auditors

August 11, 1988

Tom Mather  
Tom Mather & Assoc. Realty Co.  
PO. Box 1724  
Great Falls, MT 59403

Dear Mr. Mather:

The Board is very aware of your concerns regarding the By Owner franchise that has recently moved into the State of Montana.

The Board does feel this is a violation of the licensing law act, but we have legal advise to the contrary.

We have asked for an opinion from the Attorney General's office on this very question.

Sincerely,

*Grace Berger*

Grace Berger  
Administrative Assistant

1901 10th  
Ave. South  
Great Falls, MONTANA  
59405  
CALL 727-2650  
THE MONTANA PROFESSIONAL SERVICE

**TOM MATHER & ASSOCIATES REALTY CO.**  
COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1724  
GREAT FALLS, MONTANA 59404

August 9, 1988

Board of Realty Regulation  
Department of Commerce  
State of Montana  
1424 9th Avenue  
Helena, Montana 59620

Dear Board Members:

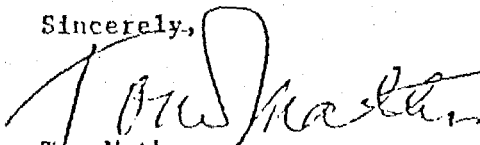
In 1963 I was recognized as Montana's first "Realtor of the Year," principally because as Montana Association of REALTORS Legislative Chairman we were able to get our real estate licensing law passed which created your Board in the interest of "Protection of the Public."

How much protection is afforded the public by the recently surfaced "By Owner" organized merchandising entity and effort? How much control do you have over this sale of real estate by these "merchandisers?"

I hope that the interest of the public may be protected by appropriate legal action by your Board of Realty Regulation.

Your concern and response is earnestly sought toward public protection.

Sincerely,



Tom Mather  
Tom Mather & Associates Realty Company  
Licensed Real Estate Agents

**Tom Mather & Associates**  
 1901 10th Ave South  
 Great Falls, Montana 59405  
 CALL 727-2650  
 TOM RELIABLE PROFESSIONAL SERVICE

**TOM MATHER & ASSOCIATES REALTY CO.**  
 COMMERCIAL AND RESIDENTIAL REALTY

1901 10TH AVENUE SOUTH

TELEPHONE 727-2650

P.O. BOX 1724  
 GREAT FALLS, MONTANA 59403

August 21, 1988

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AND WITHOUT A LICENSE TOO!

*Tom Mather*

RESUME  
OF  
TOM MATHER

H43001  
2/7/89

February 22, 1988

Education: Graduated from Montana State University 1941

Military Service: U. S. Marine Corp, 1st Marine Division, 1941-1945  
Awarded Navy Cross by Admiral Halsey on Guadalcanal  
in 1942, (2 Presidential Unit Citations); Lt. Colonel,  
USMCR, Retired

Positions Held: Vice President, Pennington/Mather, Inc., 1946-1951  
Owner/Manager, Blue Ribbon Distributing Company, 1951-1958  
Secretary/Treasurer and Manager, Moon Realty Company, 1958-1960  
Past Commander, Great Falls American Legion  
Past Commandant, Great Falls Marine Corps League  
Past President-Director, Great Falls Council of Campfire Girls  
Past President, Great Falls Community Chest  
Past Director, Kiwanis  
Member, Past Director, Great Falls Chamber of Commerce  
Owner/Manager, Tom Mather & Associates Realty Company since  
June, 1960  
Past President, Great Falls Board of REALTORS  
State Public Relations Chairman,  
X Legislative Chairman, State Convention Chairman, Montana  
REALTORS Association, 1963  
X Legislative Chairman, Montana Association of REALTORS and  
Boards of REALTORS 1962-1964  
Received Great Falls and Montana REALTOR of the Year Award  
for 1963 and Great Falls for 1983  
Secretary/Treasurer Montana Association of REALTORS and Director,  
1966-1967 and 1968-1969  
President, Great Falls Multiple Listing Service, 1972  
President Elect, Montana Association of REALTORS, 1972-1973  
X President, Montana Association of REALTORS, 1973-1974  
Chairman, Past Presidents Council, MAR, 1966-1967  
Homebuilders "Builder of the Year" award 1985-1986  
Member, MAR Nominating Committee, Professional Standards  
Committee, Legislative Committee and Long Range Planning Committee  
Chairman, Great Falls Board of REALTORS Standards Committee  
X Director, (3 terms) National REALTORS Association  
Chairman, Professional Standards Committee, Montana REALTORS  
Association  
Immediate Past Chairman and member, MAR Political Action Committee  
Past President and Director of Great Falls Real Estate  
Broker/Owners Association  
Chairman, Director, Montana Association of REALTORS Political  
Action Committee  
Montana Director and Life Member, Political Action Committee,  
National Association of REALTORS  
Presently Chairman, Great Falls Board of REALTORS Multiple  
Listing Service  
Presently State Director, MAR



## COGSWELL REAL ESTATE

### Committee Members;

Several items concern me relative to unlicensed practitioners involved in real estate:

1. Specific licensing requirements were established in 1963 to provide control and regulation over real estate sales people.

The Legislature, in recent years, saw fit to require continuing education of all licensees in the interest of proper information to the public.

There are regulations in place to ban referral fees to unlicensed people.

We are subject to auditing at any time, held responsible for our comments and advice, and required to adhere to a strict code of ethics.

Now along comes a franchise who, under the guise of selling a prepaid marketing plan, is allowed to do whatever they feel like - with no licensing required

- no educational requirements or continuing education
- receiving a fee for referring buyers and sellers
- see addendum #1, attached
- blatantly advertise professional and complete broker and brokerage services (see ads); see addendum #2, attached
- offer guidance in financing, title insurance, legal document and anything else you need to buy or sell your real estate (see ads)
- call lenders, title companies and insurance offices to check on problems for buyers and sellers
- advertise in real estate sections of newspapers, real estate booklets, such as "Homes and Real Estate" and "Real Estate Guide", see addendum #1
- hold "open house" at their office, offering advice in all areas of buying and selling homes (Great Falls-January 28, 1989) (not qualified)

It appears to me that they are allowed to do several things a realtor does, but are not required to pay the state a license fee, be audited, or adhere to any regulations for public protection.

Thank you for allowing me to provide this input to your process.

A handwritten signature in cursive script that reads "John England".

John England, Broker Associate

1. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for the collection of fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid for a fee, any person in locating or obtaining any real estate for purchase or lease. Section 37-51-102(3), MCA.

A single act performed for a commission or compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others...shall constitute the person performing any of such acts a real estate broker or real estate salesperson. Section 37-51-103, MCA.

2. IV. DEFINITION OF BROKER

A. Broker

Hence, a "broker" includes, as provided in section 37-51-102(3)

- (1) (a) an individual who
  - (i) for another, or
  - (ii) for a fee, commission, or other valuable consideration
  - (iii) with the intent or expectation of receiving a fee, commission or other valuable consideration,
- (3) (a) an individual who engages in the business of
  - (i) charging an advance fee, or
  - (ii) contracting for collection of a fee,
  - (b) in connection with a contract
    - (i) by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose, or
    - (ii) for referral of information concerning real estate to brokers, or
    - (iii) both,
  - (b) in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued
    - (i) primarily for this purpose, or
    - (ii) for referral of information concerning real estate to brokers, or
    - (iii) both;
- (4) any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;
- (5) a single act performed for a commission or compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others constitutes the person performing such act a real estate broker or real estate salesperson.



# BY OWNER

**REALITY NETWORK™ ■ GREAT FALLS**

**NO PERCENTAGE COMMISSIONS!**  
**BUYERS AND SELLERS – SAVE MONEY!**

**– AMERICA'S –  
PEOPLE-TO-PEOPLE  
REAL ESTATE MARKETPLACE**



## **ATTENTION SELLERS!**

- **NO PERCENTAGE COMMISSIONS**  
Saves you \$\$\$\$\$\$.
- A central marketplace for **MAXIMUM EXPOSURE** to property buyers.
- Low selling costs mean a **COMPETITIVE PRICE** for your property.
- Buyers are referred directly to you. **YOU DEAL DIRECT.**
- **BUYER REGISTRATION** for your benefit.
- All professional **BROKERAGE SERVICES** and guidance available at remarkably low cost.
- A complete & organized **MARKETING SYSTEM** means a potentially **QUICKER SALE** for you at a much lower cost.
- Newspaper **ADVERTISING** or other marketing methods may cost more without the **BENEFITS THAT WE OFFER.**
- Prospective **BUYERS ARE ATTRACTED** because of the many and colorful properties displayed.

## **ADVANTAGES TO BUYERS**

- Central display of **MANY PROPERTIES** offered directly from the sellers.
- **NO SALES PRESSURE.**
- Buyers are encouraged to **DEAL DIRECTLY WITH SELLERS.** (We make it easy!)
- **COMPLETE BROKER'S SERVICES** available as needed at low rates.
- **NO PERCENTAGE COMMISSIONS** mean potentially lower property prices.

**BENEFIT FROM BOTH LOCAL AND  
MULTI-OFFICE EXPOSURE  
VIA OUR FRANCHISED NETWORK!**

# MONTANA & ALBERTA, CANADA

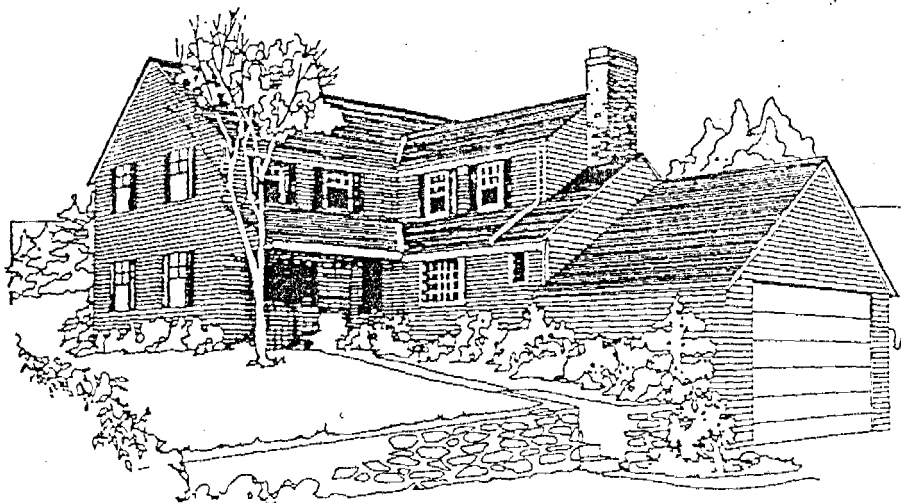
July  
1988

**BY OWNER**

REALITY NETWORK®

**FREE**

## REAL ESTATE GUIDE



### SELLERS —

**CALL YOUR LOCAL BY OWNER OFFICE TO LEARN ABOUT ALL THE SERVICES OFFERED!**

- Colorful retail display centers.
- No % commissions.
- No listing agreements necessary.
- Buyer deals directly with you.

**SAVE THOUSANDS**  
NEITHER PARTY PAYS  
ANY PERCENTAGE COMMISSIONS!

### BUYERS —

- Buyers are free to examine many sellers' properties displayed in one location with no pressure to look or buy.
- Immediate access to information on any property.
- With no large percentage commissions involved, more competitive prices are possible.
- Buyers deal directly with sellers - and with professional help always available.
- Guidance in securing financing, title insurance, legal documents and anything else you need to buy or sell your real estate.

**STOP BY & VISIT ONE OF OUR SHOWROOM OFFICES**

BOZEMAN      FLATHEAD VALLEY      GREAT FALLS  
MISSOULA      BILLINGS      HAMILTON      STEVENSVILLE  
LETHBRIDGE & MEDICINE HAT, ALBERTA, CANADA

## ADVANTAGES TO SELLERS...

10 PERCENTAGE COMMISSIONS

saves you \$\$\$\$\$\$.

central marketplace for MAXIMUM  
EXPOSURE to property buyers.

low selling costs mean a COMPETITIVE  
PRICE for your property.

buyers are referred directly to you. YOU  
DEAL DIRECT.

BUYER REGISTRATION for your benefit.

All professional BROKERAGE SERVICES  
and guidance available at remarkably low  
cost.

A complete & organized MARKETING  
SYSTEM means a potentially QUICKER  
SALE for you at a much lower cost.

Newspaper ADVERTISING or other  
marketing methods may cost more without  
the BENEFITS THAT WE OFFER.

Prospective BUYERS ARE ATTRACTED  
because of the many and colorful  
properties displayed.

## ADVANTAGES TO BUYERS

Central display of MANY PROPERTIES  
offered directly from the sellers.

NO SALES PRESSURE.

Buyers are encouraged to DEAL DIRECTLY  
WITH SELLERS. (We make it easy!)

COMPLETE BROKER'S SERVICES available  
as needed at low rates.

NO PERCENTAGE COMMISSIONS mean  
potentially lower property prices.

We may give you just the  
edge you need. Please  
call or stop in, see for  
yourself!!



BY OWNER OF GREAT FALLS  
TIMES SQUARE - 4TH FLOOR LEVEL  
525 CENTRAL AVE.  
P. O. BOX 6018  
GREAT FALLS, MT 59406-6018  
(406) 462-0222

## INTRODUCING.....

# BY OWNER<sup>®</sup>

REALITY NETWORK<sup>™</sup>

## AMERICA'S PEOPLE-TO-PEOPLE REAL ESTATE MARKETPLACE!

## SAVE THOUSANDS\$

## NO PERCENTAGE COMMISSIONS!

EACH OFFICE INDEPENDENTLY OWNED AND OPERATED

# That's Right! No Percentage Commissions!

**BUYERS AND SELLERS  
SAVE MONEY!**

Neither  
PARTY PAYS ANY  
PERCENTAGE  
COMMISSIONS!

**BY OWNER®**

REALITY NETWORK™

MEETS TODAY'S NEEDS  
for REAL ESTATE SELLERS

HERE'S HOW

BY OWNER®

REALITY NETWORK™

WORKS FOR YOU!!

SELLERS — A MODEST BASIC FEE provides  
all these services:

- We will photograph your property and help you to prepare a distinctive photographic display.
- We will showcase your property in our attractive, professional display centers.
- We will provide a distinctive "FOR SALE" sign featuring your phone number.
- Phone message answering service available at no charge.
- A sales packet containing information, sales tips and important forms.
- A property review with suggestions that may help you make the sale.
- You provide information about your property and we distribute it DIRECTLY to prospective buyers.
- Exposure power!! Local or regional exposure through our multi-state office network.

### OPTIONAL SERVICES FOR SELLERS AND BUYERS

We can assist you with all your selling  
OR your buying needs!

- In-House Consulting Brokers to assist you in many of our offices. You pay only for the services you need.
- A one-stop Service Center for help in obtaining the Professional services you need.

### BUYERS

- Buyers are free to examine many property displays in one location with no pressure to look or buy.
- Immediate access to information on any property.
- Buyers may deal directly with sellers with no percentage commissions involved, and with professional help always available.
- More competitive prices are possible with no percentage commission



## VISITORS' REGISTER

Business

COMMITTEE

BILL NO. 429 430 431 521 DATE \_\_\_\_\_

DATE \_\_\_\_\_

2/7/89

SPONSOR

Grady Grand

Please put  
bill number

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.